

Before the
Federal Communications Commission
Washington, DC

In the Matter of:

ESA Petition for Extension of)	
Video Game Software Class Waiver)	
of Commission's Rules for Access)	
to Advanced Communications)	CG Docket No. 10-213
Services and Equipment by People)	
with Disabilities)	

Comments of

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
National Association of the Deaf (NAD)
Hearing Loss Association of America (HLAA)
Association of Late-Deafened Adults (ALDA)
Cerebral Palsy and Deaf Organization (CPADO)
California Coalition of Agencies Serving the
Deaf and Hard of Hearing (CCASDHH)
National Association of State Agencies of the
Deaf and Hard of Hearing (NASADHH)
Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)
Rehabilitation Engineering Research Center on Technology for the Deaf and Hard
of Hearing, Gallaudet University (DHH-RERC)

November 30, 2016

Blake E. Reid
Counsel to TDI
blake.reid@colorado.edu
303.492.0548

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), the National Association of State Agencies of the Deaf and Hard of Hearing (NASADHH), and the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), collectively, “Consumer Groups,” and the Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC), respectfully comment on the Oct. 19, 2016 Petition for Extension of Waiver of the Entertainment Software Association (ESA Petition), in response to the Commission’s October 31, 2016 Request for Comments (RFC).¹ As the RFC notes, the ESA Petition is rooted in a petition initially filed in 2012 for multiple classes of video-game-related equipment, which the Consumer and Governmental Affairs Bureau granted until 2015 and then partially renewed for video-game software only through January 1, 2017.²

At the outset, we acknowledge the sincere and significant efforts that ESA and its members have taken over the past several years to improve the accessibility of gaming equipment and software.³ We also appreciate the efforts of ESA and its members to dialogue and work with the deaf and hard of hearing community and gather feedback on their products and services from gamers who are deaf or hard of hearing.⁴

¹ Petition for Waiver (2016 ESA Petition), <https://www.fcc.gov/ecfs/filing/1019285494250>; Request for Comment (RFC), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db1031/DA-16-1236A1.pdf.

² RFC at 1.

³ See generally ESA Waiver at 8-17

⁴ See, e.g., *Thanks to The Paciello Group, TDI Meets with Entertainment Software Association and Sony Interactive Entertainment* (Oct. 5, 2016), <https://tdiforaccess.org/2016/10/gaming-esa-sony/>.

However, while the gaming industry’s commitment to accessibility has improved significantly over the past several years, compliance with the Commission’s Advanced Communications Services (ACS) rules from which ESA seeks to renew its waiver and the associated provisions of the Twenty-First Century Communications and Video Accessibility Act (CVAA) remains critical to ensuring that people who are deaf or hard of hearing can experience the immersive communicative, social, and cultural touchstones that video games provide on equal terms. As many of the Consumer Groups noted in opposing ESA’s initial petition in 2012, “[u]sers who are deaf or hard of hearing have been and continue to be denied full membership to the gaming community—and one core reason for this exclusion has been the lack of accessibility to the ACS components that have become central to the gaming experience.”⁵

Given the importance to the deaf and hard of hearing community of equal access to ACS components of video games, it remains critical that the Commission subject the ESA Petition to a high level of scrutiny and ensure that ESA provides adequate justification for the final, temporary extension it requests. Against that backdrop, we remain concerned about three key aspects of the ESA Petition:

- While the Petition contends that “applying assistive technologies to video game software ACS continues to present substantial technical challenges,” it offers only high-level invocations of specialized code and fast-paced environments and does not describe specific efforts undertaken to make specific games accessible that have failed as a result of as-yet-insurmountable technical challenges.⁶
- Likewise, the Petition’s description of progress over the preceding waiver period is limited to high-level themes and scattered examples, but does not survey the

⁵ Opposition of NAD, et al. (June 14, 2012) (Consumer Groups 2012 Opposition), <https://ecfsapi.fcc.gov/file/7021922933.pdf>

⁶ See ESA Petition at 18-22, Appendix A 2-4.

extent to which progress has been made across at least a representative sample of games or identify specific challenges that remain.⁷

- The Petition speaks only in general terms, and without specifics or detailed milestones, to ESA's members' plans to address remaining technical challenges or engage with the deaf and hard of hearing community over the final year of the proposed waiver period.

If ESA supplements the petition with detailed, specific information on remaining challenges, progress achieved over the previous waiver period, and its members' specific plans for coming into full-compliance over the proposed final year of the waiver and continuing to gather feedback from the deaf and hard of hearing community—including through the inclusion of panelists who are deaf or hard of hearing at ESA member-hosted conferences and summits such as the PlayStation Experience 2016—we would be inclined to support the waiver so long as it is limited to that one-year period and not subsequently renewed. Without more specific detail, however, the Petition on its own does not meet the CVAA's and the Commission's high standards for demonstrating the necessity of a waiver and must be denied.⁸

Respectfully submitted,

/s/

Blake E. Reid
Counsel to TDI

blake.reid@colorado.edu
303.492.0548

⁷ See *id.* at 8-17.

⁸ See generally Consumer Groups 2012 Opposition.

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

Claude Stout, Executive Director • cstout@TDIforAccess.org
8630 Fenton Street, Suite 121, Silver Spring, MD 20910
www.TDIforAccess.org

National Association of the Deaf (NAD)

Howard Rosenblum, Chief Executive Officer • howard.rosenblum@nad.org
Contact: Zainab Alkebsi, Policy Counsel • zainab.alkebsi@nad.org
8630 Fenton Street, Suite 820, Silver Spring, MD 20910
301.587.1788
www.nad.org

Hearing Loss Association of America (HLAA)

Barbara Kelley, Executive Director • bkelly@hearingloss.org
Contact: Lise Hamlin, Director of Public Policy, LHamlin@Hearingloss.org
7910 Woodmont Avenue, Suite 1200, Bethesda, MD 20814
301.657.2248
www.hearingloss.org

Association of Late-Deafened Adults (ALDA)

Steve Larew, President • slarew@aol.com
8038 MacIntosh Lane, Suite 2, Rockford, IL 61107
815.332.1515 • 866.402.2532 (toll-free)
www.alda.org

Cerebral Palsy and Deaf Organization (CPADO)

Mark Hill, President • president@cpado.org
1219 NE 6th Street, Apt. #219, Gresham, OR 97030
503.468.1219
www.cpado.org

**California Coalition of Agencies Serving the
Deaf and Hard of Hearing (CCASDHH)**

Sheri Farinha, Vice Chairperson • sfarinha@norcalcenter.org
4708 Roseville Road, Suite 111, North Highlands, CA 95660

**National Association of State Agencies of the
Deaf and Hard of Hearing (NASADHH)**

Sherri Collins • S.Collins@acdhh.az.gov
100 N. 15th Ave. Suite 104, Phoenix, AZ 85007
602.542.3383

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

Bernie Palmer, Vice Chair • edgar.palmer@gallaudet.edu
8630 Fenton Street, Suite 121, Silver Spring, MD 20910-3803

Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC)

Contact: Christian Vogler, PhD • christian.vogler@gallaudet.edu

800 Florida Avenue NE, TAP – SLCC 1116, Washington, DC 20002

CC:

Karen Peltz Strauss, CGB

Suzy Rosen Singleton, DRO

Rosaline Crawford, DRO

Stan Pierre-Louis, ESA

Scott Blake Harris & S. Roberts Carter, Harris, Wiltshire & Grannis LLP